

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BR2

PLR-125062-11

Date:

August 10, 2011

D =

A Warrants =

B Warrants =

Company Convertible  
Preferred Stock =

Creditors =

Filings =

Liabilities =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

d =

e =

f =

g =

h =

i =  
i =  
k =  
l =  
m =

Dear :

This letter responds to your June 14, 2011 letter requesting that we supplement our private letter ruling dated September 20, 2010 (PLR-128010-10) (the "Prior Ruling"). The information submitted for consideration in this supplemental request, and additional information submitted in a letter dated August 3, 2011, is summarized below. Capitalized terms not defined in this ruling have the meanings assigned to them in the Prior Ruling.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

The Prior Ruling addresses the application of section 382(n) to a then proposed public offering of Company's stock (the "IPO") and the issuance of Company stock to satisfy a portion of the Liabilities (the "Contribution"). It was anticipated that the change in the ownership interest of the Department of the Treasury ("Treasury") in Company as a result of the IPO and the Contribution would cause the IPO and the Contribution to be testing dates, and that the owner shifts attributable to the IPO, the Contribution, and the Prior Transaction would result in an ownership change of Company within the meaning of section 382(g). Except as modified below, the representations and material facts set forth in the Prior Ruling remain in effect for purposes of this supplemental letter ruling.

### **Summary of Supplemental Facts**

Between Date 1 and Date 2, Company filed the Filings with the Securities and Exchange Commission to register shares of its common stock and the Company Convertible Preferred Stock in connection with the IPO. On Date 2, Treasury, the Lenders, and C (each a "Selling Shareholder") consummated a secondary public offering of a shares of Company common stock (the "Secondary Offering") pursuant to the IPO. All of these shares of Company common stock were purchased by unrelated shareholders that at all times owned less than five percent of the stock of Company.

The Selling Shareholders sold their shares at an initial price of \$b per share. Concurrent with the Secondary Offering, Company issued c shares of Company Convertible Preferred Stock to the public in a primary offering for \$d per share (the "Primary Offering") pursuant to the IPO. All shares of the Company Convertible Preferred Stock were purchased by shareholders that at all times owned less than five percent of the stock of Company. Company received net proceeds from the Primary Offering of \$e. Company used these proceeds, along with \$f of cash on hand, to purchase all of the Company Preferred Stock held by Treasury for \$g and to make a \$h cash contribution to D to partially satisfy the Liabilities.

On Date 3, Company undertook the Contribution to satisfy a portion of the Liabilities by making a voluntary contribution of i newly-issued shares of Company common stock to D. The Company common stock issued in connection with the Contribution had a value of approximately \$j using the closing price for Company common stock on Date 3.

On Date 4, Predecessor distributed the following to the Creditors: (i) k shares of Company common stock; (ii) A Warrants to purchase l shares of Company common stock; and (iii) B Warrants to purchase l shares of Company common stock (collectively, the "Distribution"). In addition, Company issued relatively small amounts of its common stock to certain employees and also upon the exercise of certain A Warrants and B Warrants (the "Small Issuances").

Company now contemplates redeeming at least m shares of Company's common stock held by the Treasury (the "Proposed Transaction"). It is anticipated that the Proposed Transaction will result in a testing date and that the shifts attributable to the Proposed Transaction, the IPO, the Contribution, the Distribution, the Small Issuances, and the Prior Transaction will result in an ownership change of Company within the meaning of section 382(g).

### **Supplemental Representations**

Company reaffirms that representations (a) and (c) set forth in the Prior Ruling, and restated below, remain in effect for purposes of that ruling and this supplemental ruling. Company modifies representation (b), as set forth below, and makes an additional representation. Company represents that:

- (a) Company is the common parent of a loss group as defined in Treas. Reg. § 1.1502-91(c)(1).
- (b) Company's only classes of outstanding stock are the Company common stock, the Company Preferred Stock, and the Company Convertible Preferred Stock.
- (c) A principal purpose of the issuance, transfer, or structuring of the A Warrants, the B Warrants, and the C Warrants issued as consideration in the Prior Transaction

was not to avoid or ameliorate the impact of an ownership change of any loss corporation.

- (d) Although the change in Treasury's ownership interest in Company as a result of the IPO resulted in each of the IPO, the Contribution, the Distribution, and the Small Issuances resulting in a testing date, the owner shifts attributable to the Prior Transaction, the IPO, the Contribution, the Distribution, and the Small Issuances did not result in an ownership change of Company within the meaning of section 382(g) on any such testing date.

### **Supplemental Rulings**

Based solely on the information submitted and the representations made herein and submitted with the Prior Ruling, we rule as follows:

1. The Proposed Transaction will not adversely affect the Prior Ruling, which will remain in full force and effect.
2. Section 382(n) will apply to any ownership change of Company (within the meaning of section 382(g) and the regulations thereunder) that occurs pursuant to the Proposed Transaction if that ownership change would not have occurred had the stock acquired, respectively, by Predecessor, the Creditors, the Lenders, and C pursuant to the Restructuring Plan not been taken into account in determining that shareholder's percentage of stock ownership at any time during the testing period.

### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

### **Procedural Matters**

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lisa A. Fuller  
Branch Chief  
(Corporate)